

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MICHAEL TED LAMB,
Plaintiff,

v.

OSCAR MENDOZA, ET AL.,
Defendants.

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C.A. NO. C-07-449

MEMORANDUM OPINION AND ORDER DENYING WITHOUT PREJUDICE
MOTIONS FOR PREPARATION OF THE TRIAL TRANSCRIPT AT PUBLIC
EXPENSE AND FOR A COPY OF THE TRIAL TRANSCRIPT

Plaintiff, a prisoner proceeding *pro se* and *in forma pauperis* filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging various constitutional violations. A jury trial was held, resulting in a verdict in favor of defendants. Final judgment that plaintiff take nothing was entered June 4, 2010 (D.E. 101). Plaintiff was granted permission to reopen the time to file his notice of appeal pursuant to FED. R. APP. P. 4(a)(6), and he timely did so (D.E. 132, 133). Plaintiff is proceeding *pro se* and has been granted leave to appeal *in forma pauperis* (D.E. 140). Pending are plaintiff's motions to have the trial transcribed at public expense and for a copy of the trial transcripts (D.E. 134, 136).

Fees for transcripts furnished to persons permitted to appeal *in forma pauperis* shall be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). 28 U.S.C. § 753(f). Payment by the United States for printing of the record on appeal and transcripts may also be ordered if the record or transcript is required by the appellate court. 28 U.S.C. § 1915(c); Harvey

v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126, 105 S.Ct. 2659 (1985). In this case plaintiff has not set forth the issues he plans to raise in his appeal; therefore a decision cannot be made as to whether his appeal is frivolous, or whether preparation of the trial transcripts is necessary. The Fifth Circuit Court of Appeals has not indicated that it required a transcript of any of the proceedings in this case.

Accordingly, plaintiff's motions (D.E. 134, 136) are denied without prejudice.

ORDERED this 6th day of January, 2011.



B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE